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No. 469

United States Court of Appeals

FOR THE SECOND CIRCUIT

CONSTANTINE MACRIS,

Plaintiff-Appellant,

—against—

SOCIEDAD MARITIMA SAN NICOLAS, S. A., and PETMAR AGENCIES, INC.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT,
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLEES' APPENDIX

RENATO C. GIALLORENZI,
Attorney for Appellees,
No. 50 Broad Street,
New York City.

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(670)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civ. Action #81-35

CONSTANTINE MACRIS,

Plaintiff,

—against—

SOCIEDAD MARITIMA SAN NICOLAS, S. A., and PETMAR AGENCIES, INC.,

Defendants.

Defendants, answering the complaint, by their attorney, Renato C. Giallorenzi, allege upon information and belief as follows:

FOR THEIR ANSWER TO THE FIRST CAUSE OF ACTION

1. Deny any knowledge or information thereof sufficient to form a belief as to each and every allegation contained in Paragraph "1" of the complaint.

2. Admit that the defendant, Sociedad Maritima San Nicolas S. A., is a corporation organized and existing under and by virtue of the laws of the Republic of Panama and except as herein admitted, deny the remaining allegations contained in Paragraph "2" of the complaint.

3. Admit that the defendant, Petmar Agencies, Inc., at all times mentioned in the complaint, maintained an office and place of business located at 17 Battery Place,

Borough of Manhattan, City and State of New York and acted as agent for the defendant, Sociedad Maritima San Nicolas, S. A., and except as herein admitted, deny the remaining allegations contained in Paragraph "3" of the complaint.

4. Admit that at all times mentioned in the complaint, defendant, Sociedad Maritima San Nicolas S. A., owned, operated, managed and controlled the SS "Euryviades", a merchant vessel (671) and except as herein admitted, deny the remaining allegations contained in Paragraph "4" of the complaint.

5. Admit that at all times mentioned in the complaint plaintiff was signed aboard the SS "Euryviades" as Second Mate by the defendant, Sociedad Maritima San Nicolas S. A., having signed articles therefor at the port of Baltimore on April 6, 1952 at the rate of wage of £70 per month and board and lodging and continued in said employ through July 4, 1952 and except as herein admitted, deny the remaining allegations contained in Paragraph "5" of the complaint.

6. Deny each and every allegation contained in Paragraphs "6", "7", "8", "9", "10", "11", "12" and "13" of the complaint.

AS A FIRST, COMPLETE DEFENSE TO THE FIRST CAUSE OF ACTION

7. That if plaintiff received any injuries as alleged in the complaint, said injuries were caused in whole or in part by plaintiff's negligence and were not caused or contributed to in any manner by any negligence of these defendants.

Answer

As a Second, Complete Defense to the First Cause of Action

8. That the injuries to the plaintiff, if any, arose out of certain risks, dangers and hazards, all of which were open, obvious and well known to the plaintiff at and before the said injury, and all of said risks, dangers and hazards had been assumed by the plaintiff.

As a Third Complete Defense to the First Cause of Action

9. That the SS "Euryviades" was at all times hereinafter mentioned in the complaint, a Liberian ship and registered under and subject to the laws of Liberia; that the plaintiff was a member of the crew of said Liberian ship and together with all (672) other members of the crew thereof, subject to the laws of Liberia.

10. That the issues involved herein accordingly are subject to and governed by the laws of the Republic of Liberia.

For Their Answer to the Second Cause of Action

11. Deny each and every allegation contained in Paragraph "14" of the complaint.

As a First Complete Defense to the Second Cause of Action

12. That if plaintiff became sick or disabled as alleged in the complaint, said sickness was caused in whole or in part by plaintiff's fault and was not caused or contributed to in any manner by the fault of these defendants.

Answer

As a Second Complete Defense to the Second Cause of Action

13. That plaintiff was paid by the owners of the SS "Euryviades" all of the monies due him while employed by the owners of said vessel, which monies were paid by the owners of said vessel and accepted by the above-named plaintiff in full payment of, and for the matters and things stated in the complaint.

As a Third Complete Defense to the Second Cause of Action

14. That the SS "Euryviades" was at all times hereinafter mentioned in the complaint, a Liberian ship and registered under and subject to the laws of Liberia; that the plaintiff was a member of the crew of said Liberian ship and together with all other members of the crew thereof, subject to the laws of Liberia.

15. That the issues involved herein accordingly are subject to and governed by the laws of the Republic of Liberia.

Wherefore, defendants demand judgment dismissing the plaintiff's complaint together with the costs and disbursements (673) of this action.

Renato C. Giallorenzi
Renato C. Giallorenzi
Attorney for Defendants,
Office & P. O. Address,
50 Broad Street,
New York, N. Y.

Order Dated June 10, 1955 Amending Answer

(711)

[SAME TITLE]

• • • •

FURTHER ANSWERING THE COMPLAINT AND FOR A FOURTH, SEPARATE AND COMPLETE DEFENSE TO THE CAUSES OF ACTION SET FORTH IN THE COMPLAINT, DEFENDANTS ALLEGE:

16. That heretofore and on or about the 14th day of April, 1952, plaintiff, for a (712) valuable consideration, duly executed and delivered to defendants a release in writing wherein and whereby he released defendants from any and all liability upon the claims of plaintiff alleged in plaintiff's complaint herein.

Testimony

(1)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civ. 81-35

CONSTANTINE MACRIS,

Plaintiff,

—against—

SOCIEDAD MARITIMA SAN NICOLAS, S. A. and PETMAR AGENCIES, INC.,

Defendants.

Before:

HON. LAWRENCE E. WALSH,
District Judge.

New York, October 25, 1955,
10.30 a. m.

APPEARANCES:

JACOB RASSNER, ESQ.,
Attorney for Plaintiff.

RENATO C. GIALLORENZI, ESQ.
Attorney for Defendants.

• • • •

(2)

Mr. Rassner: If the Court please, • • •

• • • •

Excerpts from Opening on Behalf of Plaintiff

(3) • • •

I ask Mr. Giallorenzi, in the interest of expediency, will you stipulate that these are the facts so I don't have to—so far—so I don't have to question the plaintiff on that?

Mr. Giallorenzi: I will, except for this fact, your Honor: I cannot stipulate anything prior to Baltimore, April 7, 1952, because the complaint——

Mr. Rassner: All right, I will continue.

• • • •

(4) • • •

In view of the fact that this ship was (5) flying an alien flag and was owned by an alien corporation, the facilities of the Public Health Service were not available to the seaman other than at the expense of the owner. So the owner provided private treatment by way of the Marine Hospital, but in this instance it constituted private treatment for which I understand the defendant paid.

• • • •

(7) • • •

The cause of action upon which we are suing at the present time is one involving a voyage which commenced in Baltimore, I think it was April 1952. Commenced in Baltimore April 7, 1952. That is the voyage on which we claim liability is imposed.

We contemplate making a motion, • • •

However, we will come to that at a later time. I am not making a motion at the present time.

• • • •

[Dr. Jesse Hymes—for Plaintiff—Direct]

(20) • • •

The Court: What does the complaint allege?

Mr. Rassner: We are not——

Excerpts from Opening on Behalf of Defendants

The Witness: We are not saying malpractice.

Mr. Rassner: That is a trial question. The argument advanced in the objection to my question is unfounded. No. 1, we don't claim malpractice. • • •

• • • •

(29) • • •

Mr. Rassner also stated that he would sooner or later, I don't know when, make a motion to the Court to add another cause of action. I presume that he is going to add a cause of action which deals somewhat with the accident in Bremen. Well, if that motion is made, I would now like to voice my objection to the making of such a motion, not only on the eve of trial, but even after trial has commenced, and I would like to submit in that regard and in opposition to such motion as Mr. Rassner will make an affidavit and a memorandum of law.

The Court: Well, why do you do that before there is any motion made?

(30)

Mr. Giallorenzi: Well, I don't know what he is going to do. I mean, as he indicates, he is going to make his motions as they come along, just the way he said, he indicates. I don't know whether I am under the Jones Act or the General Maritime Law. I am here to defend the case, your Honor, and I have got to know what I have to defend.

The Court: All right.

Mr. Giallorenzi: Now, I strenuously oppose any motions to amend the complaint which will add additional causes of action or new causes of action for the reasons set forth in my affidavit.

The Court: All right.

Mr. Rassner: By that statement he waives notice; he can't plead surprise.

Colloquy of Counsel

Mr. Giallorenzi: Well, I mean, you said it yesterday that you were going to do it. You said yesterday —

Mr. Rassner: Premature. I may change my mind. I have not made any.

Mr. Giallorenzi: After all, I can't run back to my office and dictate an affidavit or memorandum of law when you have an advantage over me if you are going to call these motions as you see fit. (31) I have got to be prepared for them, your Honor, and I don't think it is right that at this late date, Mr. Rassner has been in this case since January, that he should go ahead and try to ring in a new cause of action.

• • • •

(33) • • •

I would also like to stress one other thing, your Honor, that the complaint alleges that we resigned this man on April 7th and that everything that happened to him was from that day on, April 7, 1952.

Therefore, I again say, looking at the pleading, which is very important, that any information which they seek to bring in before that day is foreign to the issues in this case and not germane because their cause of action is bottomed on events that happened after April 7, 1952.

There is also one other point which I would like to make in this opening and that is, there was some testimony, some reference, rather, has been made in the opening that the Marine Hospital at (34) Staten Island, at which Mr. Macris was operated on, was the agent of the owner. That is not so. The Marine Hospital is not the agent of the owner and again, if anything occurred to him there, it occurred—which we do not concede—it happened while he was in an institution of his own choosing, not one that we selected. But he wanted to go there and the consequences, if any, are his responsibility. • • •

• • • •

(42) • • •

"Panaghi D. Marchessini, on behalf of defendant, having been first duly sworn by a notary public of the State of New York, testified as follows:

"Direct examination by Mr. Goldstein:

• • • •

(44) • • •

"Then, Compania de Navegacion San Salvador S. A., a Panamanian corporation, organized in Panama; started business early in 1941, and I am President.

"Then Sociedad Maritima San Nicolas S. A., a corporation organized in Panama; started business in May 1946. I am President.

• • • •

(49) • • •

"Q. The Compania de Navegacion San Salvador S. A., who owns the stock of that corporation? A. The stock of the Compania de Navegacion (50) San Salvadore is owned 40 per cent by myself, P. D. Marchessini; 20 per cent by my wife, Helen Marchessini——

"Q. You own 40, you say? A. (Witness nods). (Continuing) 20 per cent by my son, Demetri Marchessini, and 20 per cent by my son, Alexander Marchessini.

• • • •

(51) • • •

"Q. Who owns the stock for Sociedad San Nicolas? A. San Nicolas is a subsidiary of San Salvador, and all the stock of San Nicolas is owned by San Salvador.

• • • •

(56) • • •

"Q. When you say that Petmar acts as an agent, what are its duties as an agent? A. The duties as an agent is to find employment for the ships in the United States,

Excerpts from Examination Before Trial of Panaghi D. Marchessini—for Plaintiff—Direct

collect freights, pay disbursements, and generally do the services expected from an agent in a foreign country.

• • • •

(103) • • •

"Q. You also testified that you became a citizen of the United States on or about July 12, 1955? A. Exactly.

"Q. And that your wife became a citizen on August 4th, 1953? A. Yes, sir.

"Q. Your son, Demetri, on July 14th, 1953; your son, Alexander, on August 10th, 1954? A. Yes, sir.

"Q. Prior to that time, were you, your wife and two children citizens of Greece? A. That's right.

• • • •

(104) • • •

"Q. You have testified to familiarity with the activities of Petmar Agencies, Inc. When Petmar Agencies, Inc. acted for a vessel, whether for Sociedad Maritima San Nicolas S. A. or any other, when freights were collected or disbursements made, or any other acts done with respect to those vessels, where those acts done as agents for the account of the owner of the vessel? A. Yes, sir.

• • • •

(126) • • •

[Dr. Jesse W. Hymes—for Plaintiff—Recalled—Direct]

Mr. Rassner: —the photostatic copies of the hospital record at Bremen.

Mr. Giallorenzi: I object to that, your Honor, because the pleadings very clearly indicate that the cause of action which is being tried is based on a contract of employment in April of 1952, at Baltimore, and these medical records deal—this medical record at Bremen deals with an examination of the

plaintiff in that particular city on January 17, 1952.

The Court: I will take it. Overruled.

Mr. Giallorenzi: I respectfully except.

(Plaintiff's Exhibit 4 received in evidence.)

Mr. Rassner: At this time I offer in evidence photostatic copies of the records of treatment at Santos.

Mr. Giallorenzi: My objection is based on the same ground as the prior one, that this was an examination conducted before April 7, 1952.

The Court: I will take it.

(Plaintiff's Exhibit 5 received in evidence.)

The Court: Wait a minute. What is Exhibit 5?

Mr. Rassner: The treatment at Santos.

(127)

The Court: All right.

Mr. Giallorenzi: And I object to it on the ground that it also involves——

The Court: Earlier period.

Mr. Giallorenzi: That's right.

The Court: All right, I will overrule that objection.

• • • •

(137) • • •

Mr. Giallorenzi: I have to object continuously, your Honor, but I have to maintain my position that Mr. Rassner is limited to April 7th forward, and again I renew the objection on that ground. Rather than waste the Court's time, may I have a continuing objection to any question which may relate to a day prior to April 7, 1952?

Motion to Strike Certain Testimony of Witness Hymes—Denied

The Court: Yes.

• • • •

(159) • • •

Mr. Giallorenzi: I now move to strike out (160) those portions of Dr. Hymes' testimony which deal with the statements made that the plaintiff's condition was the result of an overdose of prolonged anesthesia, on the ground that the doctor has testified that he has had no experience as an anesthetist and that he has no independent knowledge of his own as to the use of metycaine or any other drug.

• • • •

Mr. Rassner: If there was any indication that we predicate a cause of action on an overdose of anesthesia, I hereby withdraw any such claim. We say we are not making any claim based on an overdose. We say that the treatment was proper, the amount, under the circumstances, was proper.

The Court: I will deny your motion at this time, without prejudice to renewing it at the close of the plaintiff's case.

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(263) • • •

William L. Ferber, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination by Mr. Giallorenzi:

• • • •

(285) • • •

Q. Could you have any lesions to the spinal cord if a spinal anesthesia of metycaine was injected between the

third and fourth vertebrae and the fourth and fifth vertebrae?

Mr. Rassner: If the Court pleases, we have no such claim in the case.

The Court: I will take it.

• • • •

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(294) • • •

ALLISON H. DUGDALE, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination by Mr. Giallorenzi:

• • • •

Q. Dr. Dugdale, did you examine the plaintiff, Constantine Macris? A. Yes, I did.

(295)

Q. Could you tell us when you examined him? A. I think I first saw him about the middle——

Mr. Rassner: We have all the reports.

Mr. Giallorenzi: Wait a minute. Let him testify. This will cut him short.

A. I examined him, I think, the 15th of July, 1952.

Q. And that was before he was operated on? A. Yes.

Q. Could you tell us what you ascertained his condition to be? A. He had a small right and left inguinal hernia.

Q. Could you determine at that time whether Mr. Macris could travel? A. Oh, yes, he could travel.

Q. And could he have made a trip to Greece in safety? A. Oh, yes.

Q. Did you consider that Mr. Macris' condition was such at that time that he needed an immediate operation? A. Oh, no.

• • • •

(297) • • •

KARL F. URBACH, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct examination by Mr. Rassner:

• • • •

(302) • • •

Q. Does the administration of anesthesia entail certain incidental risks? A. Any anesthetic entails risks.

• • • •

(303) • • •

Q. Now, doctor, in administering the anesthetic, was there any incident that you want to call our attention to? A. There was no incident at the time, either of these anesthetics was administered, as far as the records show.

Q. You do know that on occasion there is a surgical accident in administering anesthetics? A. An anesthetic accident.

• • • •

Q. Was there any anesthetic or surgical accident involved in this case? A. No.

• • • •

(306) • • •

Q. Was there any contact between the needle and any nerve or nerve fiber? A. There was no contact that we could tell.

Q. Well, is it your opinion with a reasonable degree of medical certainty that there was no contact?

• • • •

A. That is my opinion.

Q. Upon what facts do you base your opinion? A. When a spinal needle, on entering the spinal canal, makes contact with a nerve, there is usually a sensation the-

patient experiences. If it is a motor nerve there is a jerking of a limb; if it is a sensory nerve there is usually a sensation of (307) electric shock, and the patient will tell and can tell whether—there is no other way of telling whether——

Q. And if such contact is made, is it the practice of your hopsital and you in particular to make an entry of that in the record? A. Yes.

Q. Was there any such record made by the doctor who did the second administration of anesthetic? A. No.

Q. From that record can you state with a reasonable degree of medical certainty whether there was any nerve and needle contact on the second administration of anesthesia? A. I can.

Q. And what is your opinion? A. No.

• • • •

(316) • • •

Cross examination by Mr. Giallorenzi:

• • •

Q. I mean after the secon operation. A. After the second? I have stated before that this is a complication which we see in approximately 3 per cent of persons who have low abdominal operations and receive spinal thesia for it. It is an excepted risk.

Q. It is not usual, in other words? A. It is; three out of a hundred patients will get it.

• • • •

(317) • • •

Q. I notice that when you administered the anesthesia on the first operation, that there were 100 milligrams of metycaine used. A. Metycaine, that is correct.

Q. And that is a standard drug? A. It is a standard drug.

Q. It is used, accepted; is that right? A. Its use is accepted.

• • • •

(318) • • •

Q. Then in other words, you testimony is that the materials which were used on the two occasions were exactly the same? A. Right.

Q. And did you consider the two materials which were used—and I am now talking about the metycaine and the glucose used to weigh the metycaine down—normal? A. Yes.

Q. Amounts? A. Yes.

• • • •

(319)

Q. Now, if there was anything unusual that occurred during the administration of the spinal, that would be noted on the report? A. That is correct.

• • • •

Q. And we have no such entries in these two reports of the two operations? A. That is correct.

• • • •

(325) • • •

Q. Now, I refer to Plaintiff's Exhibit 1, the anesthetist's report for the second operation, and ask you to state whether in your opinion the anesthesia was administered with proper technique.

Mr. Rassner: I object to this. There is no claim that it wasn't. Again we are having a straw man put up.

The Court: I will overrule the objection. Go ahead.

The Court: Do you want the question read back?

The Witness: I know the question now.

A. It is impossible to state whether the technique is proper without being present and watching a spinal anesthetic administered. As far as appears from the record, and knowing the man who administered that spinal anesthetic, it probably was administered (326) with good technique.

• • • •

(332) • • •

Q. In other words, the first operation consumed about an hour and the second one likewise? A. Approximately, yes, sir.

Q. Would you say that the anesthesia which you administered and which Dr. Carter administered would be considered a prolonged anesthesia? A. No.

• • • •

(335)

CONSTANSTINE MACRIS, the plaintiff, having been first duly sworn, testified as follows:

Direct examination by Mr. Rassner:

• • • •

(338) • • •

Q. Now, you signed on, on the Euryviades on November 10, 1951. A. That's right.

Q. Where was that, what city? A. Piraeus, in Greece.

• • • •

(341) • • •

Q. Now, when the vessel arrived at Bremen, Germany, on January 8, 1952, in what capacity were you sailing? What was your job? A. Second mate.

Constantine Macris—Plaintiff—Direct

Q. Was it your intention to have the vessel ride at anchor or tie to at the pier?

Mr. Giallorenzi: Now, I press my objection, your Honor, on the ground that Mr. Rassner is now seeking to bring in testimony which involves a period of time without the pleadings. The pleadings specifically allege a cause of action against these defendants based on a hiring of the plaintiff on (342) April 7, 1952, at the Port of Baltimore.

The Court: I think he can show the course of dealing between the parties before the hiring. I will take it. Don't lead, Mr. Rassner.

Mr. Giallorenzi: I respectfully except.

Mr. Rassner: That is what I said. I specifically stated that unless counsel objected I was going to lead from certain points and then stop from there.

Mr. Giallorenzi: I will have to object to this.

The Court: All right.

Mr. Rassner: I don't intend to lead from that. I just wanted to skip over these questions, on which there was no dispute.

Mr. Giallorenzi: Just before we go any further, if you are going to have a line of questions on anything dealing prior to April 7, 1952, I would like to note now for the sake of saving time a continuous objection to all of those questions.

The Court: All right, your objection is noted, but I am going to let him prove the history of the dealing of the parties up to Baltimore.

• • • •

(415) • • •

CONSTANTINE MACRIS, resumed.

• • • • •

Direct examination (continued) by Mr. Rassner:

• • • •

(417) • • •

Q. Did you stay on the ship? A. I stay.

Q. Where did the ship go from Baltimore? A. From Baltimore to Korea.

Q. To Korea? A. Yes.

Q. And did you get any treatment on the ship? A. No.

Q. How did you feel? A. Always worse.

Q. Always what? A. Worse.

Q. It always hurt? A. Yes.

Q. Was it the same hurt? A. No, always more pain.

• • • • •

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(508)

CONSTANTINE MACRIS, resumed.

Cross examination (continued) by Mr. Giallorenzi:

• • • •

(525) • • •

Q. Do you mean to tell me your testimony is that you picked the second line up just to put, place it on a bollard on the deck of the vessel? A. Yes.

Q. In other words, you were picking the line up and putting it on a bollard? A. Yes.

Q. That is when you felt this pain? A. Yes.

Q. Have you ever picked a similar line up before? A. Only on that ship.

Q. And you pick that line up, you say, with several other men? A. Yes.

Q. In the act of picking the line up to place it on this bollard, you felt a pain? A. Yes.

Q. Were there any other lines placed ashore? A. Before or after?

Q. No, after. A. Yes.

Q. Were they the third— A. Yes.

Q. And how did you place the third line to shore? (526) A. Between that time, I stayed a little down because I felt pain and after a few minutes I got up again, and from the bridge told me again to give the third line.

Q. I assume you threw that out, is that right, to the dock? You threw the third line out? A. Yes.

Q. What else did you do after that? A. We put the third, fourth, fifth—I don't remember how many lines we put all together, but we put more than three or four lines out; I mean, ropes, and we fixed it little by little on the ship.

Q. After you picked up that second line and put it on the bollard on the deck, did you handle any other lines? A. After?

Q. Yes, during this operation. Did you handle any other lines? A. After the second?

Q. Yes. A. No.

Q. Before the vessel left did you see a doctor in Germany? A. Yes.

Q. Who sent you there? A. The captain.

Q. What did the doctor tell you, if you recall? (527) A. The doctor said, "You have a hernia, both sides, and immediately go to the second port and you must see the doctor to the other port."

• • • •

Constantine Macris—Plaintiff—Recalled—Cross

(535) • • •

Q. Did you subsequently sign off the Euryviades at Baltimore? A. Excuse me?

Q. Did you sign off the ship? A. Yes.

Q. At Baltimore? A. Yes.

Q. Referring to Plaintiff's Exhibit C for identification, is this your signature here? A. This one.

Q. And the date which you signed off was April 6, 1952, is that right? A. Must be.

Q. And the observation was "Signed off on account of illness," is that correct? A. Yes.

Q. Did you go ashore with your belongings, your uniforms, your sextant? A. Uniforms?

Q. Yes, when you signed off the vessel did you take your baggage with you? A. In——

(536)

Q. In Baltimore. A. Let me explain you.

Q. You tell me what you did after you signed off in Baltimore. A. I wait to go to the Marine Hospital.

Q. Yes. A. And then came the wagon and took me to Marine Hospital, and I took my clothes, my luggage, and I go in the hospital and because the—the guardsman took me back with all my clothes again to the ship.

Q. Were you examined by a doctor in the Marine Hospital? A. Yes.

• • • •

(537) • • •

Q. After you came back from the Marine Hospital in Baltimore, what happened then, Mr. Macris? A. I requested Captain—to Captain to send me back in Greece.

Q. And? A. And he refused at first, but after, I don't know how long, he called me and told me (538) "you can go with the ship 'Nea Hellas'. • • •"

• • • •

(539) • • •

Q. Do you know what type vessel the "Nea Hellas" is? A. Passenger ship.

• • • •

(543) • • •

Q. You then were told by Captain Panaghi Dracatos that he had arrangements to return you to Greece; is that correct? (544) A. Yes.

Q. Then you resigned on the vessel for the trip to Korea? A. Yes.

Q. As second mate also? A. Yes, sir.

Q. At 70 pounds a month? A. Yes.

Q. You knew when you resigned that the vessel was going to Korea, is that correct? At Baltimore, when you signed on again? A. Yes.

• • • •

(545) • • •

Q. After you arrived at Masan, Korea—is that (546) the port you went to? A. Yes.

Q. Did you see a doctor there? A. Yes, sir.

Q. You were examined by him? A. Yes, sir.

Q. Was Captain Panaghi Dracatos with you at the time of the examination? A. Yes.

• • • •

(548) • • •

Q. When the vessel left Masan, where did it then proceed to? A. We stopped in Japan for a few hours in—port (549) in Japan for bunkers.

Q. Then you came to San Francisco? A. To Richmond.

Q. Were you examined——

Mr. Rassner: I was wondering this is off the record.

(Discussion off the record)

Constantine Macris—Plaintiff—Recalled—Cross

Q. Where did you arrive at? What was the first port on the West Coast, Mr. Macris? A. In Richmond, California.

Q. Were you examined by a physician there? A. Yes.

Q. Did you ask to be operated on in Richmond? A. No.

Q. You did not? A. No.

• • • •

(550) • • •

Q. When you arrived in New York from the West Coast you testified that you went to the offices of Petmar Agencies. A. Yes.

• • • •

(552) • • •

Q. Isn't it a fact that you told them that you wanted to remain here in the United States to be operated on because the hospitals were better equipped here? A. Yes.

• • • •

(561) • • •

Q. When you were in Greece you arrived in Greece in August 1953? A. Yes.

Q. Did any doctor examine you? A. No.

• • • •

(365) • • •

GEORGE H. HYSLOP, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct examination by Mr. Rassner:

• • • •

(370) • • •

Q. Now, would the fact that there was a delayed treatment of some seven months between onset of the hernia and the time of the operation be a competent producing cause of aggravating the condition?

Mr. Giallorenzi: I object to that, your Honor. The witness has no knowledge of the condition of the plaintiff prior to operation.

Mr. Rassner: I take that hypothetically from the evidence in the case, that he had a hernia, (371) and that is in the hospital records and the dates of treatment are there.

Mr. Giallorenzi: None of which have been shown to the witness.

The Court: I will let the witness answer within the field in which he feels qualified to express an opinion.

Mr. Rassner: Thank you, sir.

Mr. Giallorenzi: I respectfully except.

Q. Would you give us the benefit of your opinion, doctor? A. Well, the question I don't know whether you are referring to whether there are facts in the record which would enable a specific answer, or whether you are referring to a hypothetical general situation.

Q. Well, you are acquainted with the hospital record and past history in this case. Suppose you take that into account. A. Well, I have seen that left with me yesterday.

the hospital records and the findings of, I think, two physicians who had seen the man prior to operation. I couldn't say from those findings whether there was any measurable progress in either of the two hernias. He had had considerably more pain as time went by (372) incidental to certain muscular effort, and whether the size of the sac or thing of that sort had altered, I am not in a position to say.

Q. Well, then, I better give you the records themselves. A. The operative findings don't enable a definite answer to that either.

• • • •

(374) • • •

Q. Doctor, assume that this man's condition was such as is described in these various records, which I now will specifically call to your attention:

That his condition on the 17th day of January, 1952, was as described in Plaintiff's Exhibit 4; that on or about the 7th day of April, some two or three months later, his condition was as described in Plaintiff's Exhibit 2; assume that he continued to do work of a manual nature, such as is usually performed by an able-bodied seaman, including the painting and handling ship's gear and chipping of paint; assume that his condition by the time he entered the hospital was as described in Plaintiff's Exhibit 1;

Can you say with a reasonable degree of medical certainty whether the delayed treatment was (375) an aggravating cause in this man's condition?

Mr. Giallorenzi: My objection to that is only one, and that is, the amount of work which the plaintiff did during that period, manual work which Mr. Rassner was referring to.

Mr. Rassner: If the doctor can't state, we will add further, but I am asking the doctor if he can give an opinion on those facts as related.

A. In answer to your question, it depends upon two things; one, whether examination findings on either of these three dates, January '52, April '52 and on admission to the hospital, enable one to judge whether there had been any change in the hernia found. What is recorded does not enable an opinion on that.

• • • •

(376) • • •

Q. Doctor, what is your opinion? Is it or isn't it? I would like to have your opinion. A. I don't know. There aren't enough facts there. There is one thing which is suggestive, namely, the man's story of increasing trouble.

• • • •

(384) • • •

Cross examination by Mr. Giallorenzi:

• • • •

(393) • • •

Q. Did the plaintiff tell you when you saw him that he was impotent, but that he could have an incomplete erection and reduced sensation and ejaculation? A. That is what he told me.

Q. Did you make any specific test in regard to that? A. I couldn't.

Q. You couldn't? A. No.

• • • •

(397) • • •

Q. Did you come to the conclusion that the anesthetic which was used in these operations was the culprit and responsible for Mr. Macris's condition? A. Whatever anesthetic was used—it happened to be the same one in the second operation—responsive tissue to that anesthesia was at fault. (398) It was unpredictable and you couldn't prevent it.

• • • •

(399)

The Witness: One in 400 spinal anesthesias produce some complication directly involving, from the organic standpoint, one part or another of the nervous system. Transient or persistent, partially or totally disabling, and disturbance of bladder function is one of the common ones and I have seen several where there was a persisting impairment of bladder function.

Q. But you can't tell beforehand? A. You can't predict it; you can't prevent it.

Q. It is just one of the hazards of an operation? A. That is correct. It is one of the hazards of spinal anesthesia, these particular complications.

Q. Well, don't you have complications with other types of anesthesia, when other types of anesthesia are used? A. You have different complications.

Q. Different complications? A. Yes.

Q. So whether you use one type of anesthesia or another one, you do run a hazard of some type of complications? A. That is correct.

Q. Now, doctor, could you tell me the dose of metycaine which was used in each operation? (400) A. There was 100 milligrans. I remember reading that.

Q. And that was the same? A. It is the same dose used.

Q. Can you account for the reason why when you used the same dose of anesthesia in each operation there should be these complications? A. No.

Q. You have no reason to doubt that this anesthesia was properly administered? A. I have said no reason to doubt.

Q. You didn't see Mr. Macris until after his operation; isn't that correct? A. It was about 16 months; no, 26 months.

Q. And you made no tests involving the urological field; is that correct? A. No.

Q. And you don't know the extent and size of his hernia at the time he was operated on? A. There is nothing in the record except the operation record which describes —I think the hernia sac on the left was a little bit more advanced than the one on the right. I might be wrong. I didn't give it particular notation, but there was nothing in the record submitted to me that would enable you to say whether there is any appreciable difference (401) in the size and condition of these hernias between the first physical examination and the operation. I have already said that.

Q. So that you are not sure that the period, intervening period of time, between when Mr. Macris suffered the hernia and the date of his operation, whether there had been any appreciable enlargement of his hernia?.

Mr. Rassner: I object to the form of the question, doesn't have to be sure, and the question is improper.

The Court: Read the question back, please.

(Question read)

The Court: Overruled.

A. There is no fact to justify an opinion yes or no, no facts on record that I have seen.

Q. Would gonorrhea cause impotency, doctor? A. Yes.

Q. Could a condition of a chronic prostatitis cause impotency? A. It can.

• • • •

Dr. George H. Hyslop—for Plaintiff—By the Court

(402) • • •

By the Court:

Q. • • •

• • • •

A. • • •

• • • •

(403) • • •

• • • I felt that there was no pre-operative background which would predispose him to such a complication of the operation, whether it is spinal anesthesia or anything else that may have caused the complications.

• • • •

(411) • • •

By the Court:

Q. In other words, even a perfectly performed spinal anesthesia can produce a residual effect of the type here? A. This is one of the things which happens from a technically perfect spinal anesthesia.

The Court: All right.

Re-direct examination by Mr. Rassner:

Q. And, doctor, is it a fact that the greater amount of surgery required, the more anesthesia you must use? A. They limit spinal anesthesia use.

Q. But I am talking, the longer the operation is required to take, the more extensive work that has to be done, the greater the length? A. That is not true with spinal anesthesia.

Q. What is the situation there? A. There is one amount

given, one dose given. (412) Its effect is sufficiently long, lasts several hours before there is a return of sensory function.

• • • •

Q. I am trying to get the facts here as best I can and any help would be appreciated. Would the fact that the amount of surgery required is greater in one instance than in another have any bearing on the sequelae? A. No.

Mr. Giallorenzi: I object to it.

A. (Continuing) It has no bearing. I say we don't know what produces these complications of spinal anesthesia.

It isn't the tissue operated upon; it isn't the cause of the operation; it isn't the length of the operation. It is some other factor.

• • • •

(413) • • •

Mr. Giallorenzi: What infection?

Q. I understand there was some infection here. A. There was no infection related to the spinal anesthesia complications.

• • • •

Q. One more question. Does the resistance of the body have anything to do with the tolerance to the toxic effect of the anesthesia? A. Not that we know of.

Q. In other words— A. We have no measure of what it is responsible for, the appearance of the non-mechanical complications of spinal anesthesia, age, sex, weight, background of allergy, what have you. We have no evidence that justifies one in coming (414) to any conclusion that there are certain probable predisposing conditions.

Q. Now, one final question. If you can answer it, I would appreciate it. If not, just say you can't answer it. What determines, if you can tell us, the need of two operations rather than one for a double hernia?

Mr. Giallorenzi: I object to that, your Honor, on the ground that Dr. Hyslop was not present at the time they diagnosed the plaintiff's condition and whether it needed one or two operations.

Mr. Rassner: Well, there is no question he needed two.

The Court: Let's not get into an argument. I will take the doctor's answer, qualified as he feels necessary.

A. I wouldn't answer that question in this case.

The Court: All right, that is the answer, as far as I am concerned.

• • • •

(464)

GEORGE A. KEATING, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Mr. Giallorenzi:

• • • •

(466) • • •

Q. Have you ever administered any spinal anesthesia? A. Yes, sir.

Mr. Rassner: I don't question the doctor's qualifications.

Q. Did you ever use the drug known as methycaine? A. Yes.

Q. Is it an approved method? Is it an approved drug in so far as administering

Mr. Rassner: We are not claiming any mal practice here.

Mr. Giallorenzi: Wait a minute, please.

Q. Is it an approved drug in so far as the administration of anesthesia? A. Yes.

Q. Dr. Keating, I show you Plaintiff's Exhibit 1 and, in particular, the report of anesthetists on the two separate occasions, and ask you to tell us the dose of methycaine which was used in each operation? A. It says —

Mr. Rassner: If the Court please, may I object to this? There is no issue on this question. (467) I don't see why you are taking up the time of the Court and of the parties on something on which there is no issue.

The Court: Let us go ahead.

Mr. Giallorenzi: There was a very definite statement which rings out in my mind, by Mr. Rassner that there was a prolonged anesthesia.

Mr. Rassner: I withdraw my contention that there is any prolonged anesthesia. Our contention is not that the anesthetic, per se, caused any damage. It was the idea that he had to go through two operations instead of one by reason of defendants' breach of duty, that is all. If there is any doubt about it, I will concede now on the record that the amount of anesthetic administered on either and both cases was proper and adequate; that everything done in the case by the doctors was proper and adequate under the circumstances. I see no point in belaboring an issue which doesn't exist in the case.

The Court: I don't want to preclude Mr. Giallorenzi, if he wants to go ahead.

Mr. Giallorenzi: I think the point hasn't only been used by you but one of your own doctors (468) says 60 centimeters, I believe, of methycaine —

Mr. Rassner: May I stipulate to withdraw the charge, if there is such a charge?

Mr. Giallorenzi: Wait a minute. You cannot be changing your theories of the case in the middle of it. I have to meet certain proof which you raised and now you are trying to cut my defense, and I object to it, if your Honor pleases.

Mr. Rassner: If the Court please, I object to this evidence on the grounds that it is incompetent, irrelevant and immaterial. There is no issue on this question before the Court.

The Court: We will go ahead. I won't require counsel to limit his proof by your offered concession, if he doesn't want to take it. I will let him go ahead.

• • • •

(469)

Q. Are you familiar with the dose of anesthesia which you administered? A. Yes.

Q. Would you say 100 milligrams is a large amount? A. No, it is not.

Q. Is that the usual amount? A. Approximately, yes.

• • • •

Q. Doctor, again referring to these two reports of the anesthetists, could you tell us how long the operations took?

Mr. Rassner: I don't think there is any dispute. I don't understand why we are bringing out evidence as to matters on which there is no dispute. I object to it on the ground that there is no issue before the Court on these questions.

The Court: I will take it. Overruled.

A. The duration of the first one was approximately an hour, and the second one seems to be about (470) an hour, too.

Q. Would you say that they were unusual would you say that that was an unusually long period of time for a hernia operation?

Mr. Rassner: I object to that as entirely immaterial.

The Court: I will take it. Go ahead.

A. No, not so long.

* * * *

(472) * * *

Cross examination by Mr. Rassner:

Q. I would like to ask you a question. Have you seen those hospital records? Have you looked through them? A. Yes.

Q. Have you seen any evidence of malpractice?

Mr. Giallorenzi: I object to that, your Honor.

The Court: That is a pretty sweeping question.

Q. Did you see anything in the record which would indicate that the operation, or the anesthetic or the drugs, or the method of procedure was anything (473) but the average, normal procedure under this type of condition?

Mr. Giallorenzi: I object to the question because the doctor has limited his testimony to the anesthetists' report.

The Court: He may qualify his answer.

A. I looked at the report only from the viewpoint of anesthesia. I saw nothing to indicate malpractice.

* * * * *

Dr. George A. Keating for Defendants—Cross

(476)

Q. How about successive doses? Is there any correlation between neurological sequelae a. l successive average doses? A. There is none that I know of.

• • • •

(486)

JACK CLARENCE WOODSON WARNOCK, called as a witness in behalf of the plaintiff, being first duly sworn, testified as follows:

• • • •

(496) • • •

Cross examination by Mr. Giallorenzi:

Q. Doctor, how long does it take to perform an operation on hernia of this type? A. Well, that is not a question that can be answered very specifically, counselor. I would say it varies for from half an hour to a couple of hours.

(497)

Q. So does an operation of one hour each for hernia of this type is not unduly long, is it?

Mr. Rassner: Again we are getting into a field in which there is no issue. I object to it on the ground that it is incompetent, irrelevant and immaterial.

The Court: I will let him answer, if he can. If he cannot, he may qualify it.

Mr. Rassner: I will concede it is not unusual.

The Court: Mr. Giallorenzi wants the witness to answer.

The Witness: Pardon me. May I have the question?

(Question read.)

Dr. Jack Clarence Woodson Warnock—for Plaintiff—Cross

A. I would say not.

• • • •

(501) • • •

Q. Mr. Macris wasn't suffering from a strangulated hernia, was he? A. No, sir.

Q. At the time you operated on him. So no emergency existed for the operation, is that correct? A. I would say probably not.

(502)

Q. The second operation, the findings were a small indirect hernia, isn't that correct? A. Would you like me to refer to the record?

Q. Yes. A. Findings are, small indirect hernia with no direct components.

Q. That was not a strangulated one either, was it, Doctor? A. No.

• • • •

(507) • • •

By the Court:

Q. Doctor, I want to ask you:

Can you tell me the factors that entered into your decision to have two operations rather than one, if you recall now? And if you don't, why, just say so, or just qualify your answer?

The Witness: Your Honor, I don't recall.

• • • •

(568) • • •

PANAGHI DRACATOS, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination by Mr. Giallorenzi:

Mr. Rassner: Before the Captain takes the stand, I would like to make a motion on the record. I would like to move, your Honor, to amend the pleadings to conform to the proof.

The Court: You move the pleadings to conform to the proof? How will that change your allegations?

Mr. Rassner: I don't think it changes it but there may be some technical question that may arise. I believe that the type of motion that I am making at the present time——

The Court: In the absence of your pointing out to me any substantial need for granting the motion, I am going to deny it.

In other words, we will go along with the pleadings as they were proved.

Mr. Rassner: I ask your Honor to reconsider (569) the denial and ask your Honor to reserve decision.

If, on——

The Court: All right.

Mr. Rassner: —a study of the record, we deem in the interest of substantial justice an amendment of the pleadings is desirable or necessary, I would like to reserve that right to apply to the Court for that amendment. Frankly, I don't see any actual need at the moment.

The Court: I don't see that anyone has been surprised here through the trial, and I don't see any basis for amending the pleadings. As your

proof has gone along, it has seemed to be on the theory of the pleadings. I will hold it until the end of the defendants' case.

Mr. Rassner: I, frankly, don't know.

The Court: I will deny it at this time without any prejudice to you to renew it upon some subsequent date.

Mr. Rassner: Thank you.

Mr. Giallorenzi: Has the plaintiff rested?

Mr. Rassner: Plaintiff rests.

The Court: The plaintiff rests.

Mr. Giallorenzi: I suppose, ordinarily, at (570) this point the defense lawyer should make a motion to dismiss the complaint, but in view of the fact that there are several motions pending before you, one of which is a transfer to admiralty and, as I remember, such motions are not to be made in admiralty, otherwise you preclude yourself on the defense, I don't know just what to do .

The Court: It seems to me so much of the defense is in that you may make your motion on the present complaint and I will reserve decision and I will hear the rest of your case.

Mr. Giallorenzi: I so make that motion, your Honor.

The Court: Thank you.

By Mr. Giallorenzi:

Q. Captain Dracatos, by whom are you now employed? A. By nobody.

Q. Did you at one time have an interest in the Steamship "Euryviades"? A. Yes, sir, my brother and I.

Panaghi Dracatos—for Defendants—Direct

Q. What was the percentage of your interest in that vessel? A. 18 per cent amongst my brother and I.

(571)

Q. And you still have an interest in the vessel? A. No. I sold my interest.

Q. When did you sell your interest in the vessel? A. On August 1st.

Q. Of what year? A. This year.

• • • •

(607) • • •

The Court: [redacted] sides rest?

Mr. Rassner: Yes.

Mr. Giallorenzi: Yes.

• • • •

Mr. Giallorenzi: • • •

(608) • • •

I also would like to oppose strenuously any motions which Mr. Rassner may make to amend his pleadings to the proof, in view of the fact that certain elements did arise outside the scope of the pleadings.

• • • •

(648) • • •

The Court: The doctor in New York said he was fit for duty.

Mr. Rassner: At the time he was at the Marine Hospital, certainly, he was not suffering from a condition which required immediate surgery, and certainly not the surgery so extensive as to have it done in two parts.

The Court: I was well aware of this.

• • • •

Argument by Plaintiff after Decision

(650) • • •

Mr. Rassner: I feel Dr. Hyslop has made our case. Dr. Hyslop said the second operation was the result of delay.

The Court: What you haven't got for me, I think, is something which shows that there had to be two operations because of the trip from Baltimore to Korea and back to the West Coast.

Mr. Rassner: Of course, I have taken the position, and in view of your Honor's comment, that the condition was worsened from the time in July to Baltimore. I think we should be entitled to (651) include that in our cause of action. I would like to renew my motion.

The Court: No, I don't think I have a right to change your pleadings on that now. You were in no sense deprived, Mr. Rassner. As a matter of fact, not only have you been in this case since all this year but this case has been marked out for trial in this part beyond all possibility of settlement for at least a week before trial.

Mr. Rassner: It is not a case of surprise, your Honor. I told counsel, and the record so indicates, that I would move at the trial to add an additional cause of action. I cannot add it?

The Court: Now, frankly, you have raised that point, I think what we did here was conduct a war of nerves against your opponent. You suggested various types of things you might do but you never told him what you were going to do, and he was forced to prepare for trial. And even during the trial, even despite repeated concessions by you, he kept proving everything that he thought—or trying to disprove everything he thought you might ultimately try to prove or amend your pleadings to include. (652) I think there is a limit to that sort of thing and this goes beyond it. So I am going to deny your application to amend.

• • • •

Plaintiff's Exhibit 4

Doctor's Report, Bremen, Germany

(OFFSET)

[*For convenience of Court and Counsel this Copy is bound in on the opposite page.*]

Dr. med. E. B. Stade
prakt. Arzt

Schleifmühle 38 — Telefon 2 43 23

Sprechstunden: 8—10 und 16—17 Uhr
außer Mittwoch- und Sonnabendnachmittag

Bremen, den 17. 1. 1952

Mr. Louis MACRIS
has a beginning of
a hernia in the left
side right here.
It's in the moment
not sure for him
to have this.

Dr. Stade

Dr. med. ERICH B. STADE
Arzt

BREMEN, den 18. 1. 1952
Schleifmühle 38
Telefon 2 43 23

Dress of „Eingeladen"
Tor Bremen

Für ärztliche Bemühungen erlaube ich mir zu berechnen

DM 90,—

For treatment of
Mr. P. Dracos
" G. Macris
" D. Ginzepis
" N. Georgopoulos

Bremer Bank
Konto Nr. 6870
Postscheckkonto
Hamburg 8115

Betrag dankend erhalten

Bremen, den 18. 1952

Dr. Stade

Plaintiff's Exhibit 4
(p. 430)

SERAPHIM FERRAMENTA M. D. (p. 45a-2)

Consulter-Office:
Pedro II, 76-3 rd Floor
Rooms 16-17-18
Consulting hours:
10.00-12.00 hrs.
15.00-18.00 hrs.
Telefone, 2-4544

Residence:
Rua Firmino Barbosa N. 8
Telefone, 4-3928

SANTOS

SANTOS MARCH 14 . 1952.

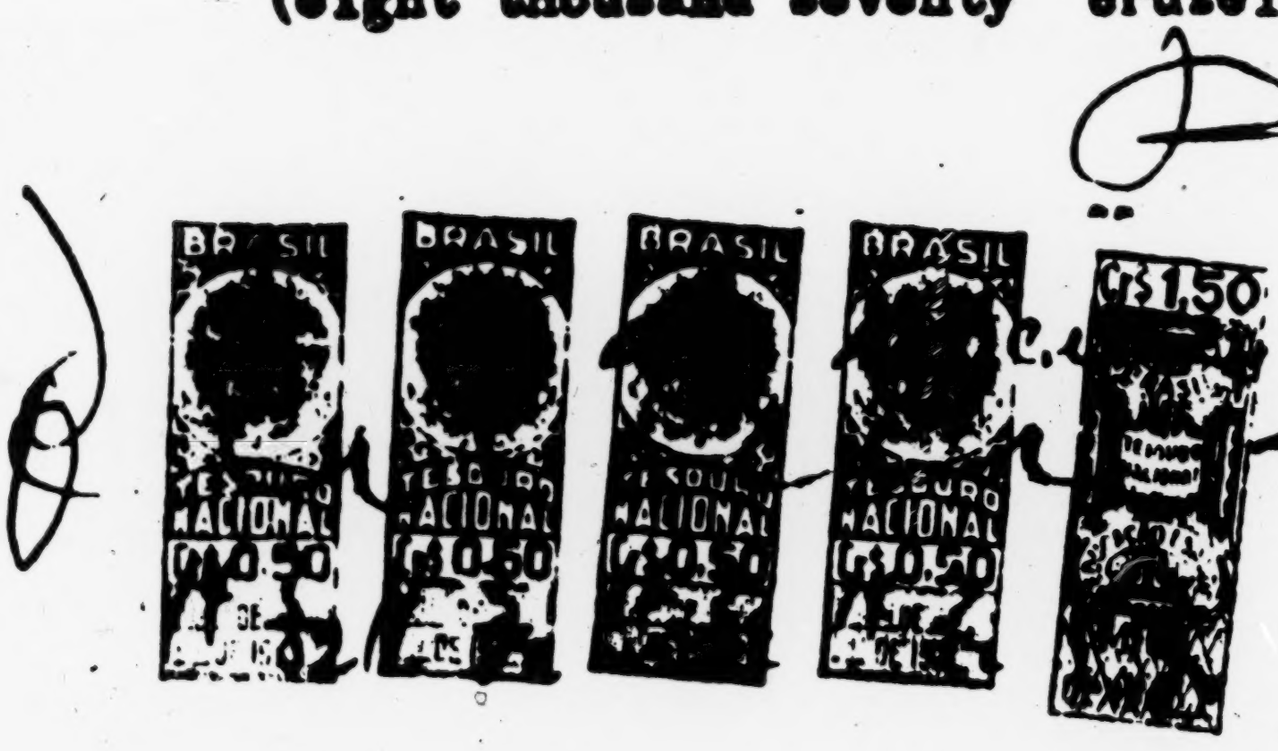
S/S " EURYVIADES "

For medical treatment rendered to

Users:	---Diagnosis---		
DANIEL HERNANDES.....	Bronchitis	Cr.$	240,00
GROUZIS OMIROS.....	Acne.....	Cr.$	290,00
NICOMEDES VALENCH.....	Dermatite. Disentery.....	Cr.$	240,00
SOTIRIOS STATARIS.....	Gastritis.....	Cr.$	360,00
NICOLAS GEORGOPOULOS..	Dermatite.....	Cr.$	720,00
NICOLAS GEORGOPOULAS..	Neurite.....	Cr.$	360,00
VENTURA GERASIMOS.....	Artritis.....	Cr.$	180,00
METROPOULAS.....	Lack of vitamin B.....	Cr.$	180,00
CONSTANTIN MACRIS.....	Little hernial point.....	Cr.$	300,00
G. TSORTATOS.....	Dispepsy.....	Cr.$	180,00
LEFTERATOS.....	Sinusitis. Cut on the hand.	Cr.$	780,00
MAGOULAS.....	Inflammation of gall blader	Cr$	180,00
LUCAS GONZALES.....	Appendicitis--Including the surgical intervention and assistance in hospital...	Cr.$	8.200,00
GERASIMATOS.....	Lack of vitamin B.....	Cr.$	180,00
GEORGE COLON.....	Arthritis.....	Cr.$	240,00
MILTIADIS SPIRATOS....	Bloqueio	Cr.$	420,00

Cr.$8.070,00

(eight thousand seventy cruzeiros)



DROGASIL LIMITADA

SÉDE SOCIAL: Rua Santo Amaro, 354 — Telefone 33-1121 — SÃO PAULO

(p. 45a - 3)

Memorandum da Filial: FARMASIL BÊTA

Rua General Câmara, 34 — Telefones: 4077 e 4014 — SANTOS

COPIAS DE N/NOTAS E-D Nº 11686-11687-11688-11689-11691

SANTOS, 12 DE MARÇO DE 1956

S/S EURIVIADES

S a n t o s

Sr. Luiz

NOTA Nº 11686

MR. MAGONLOS

1 V. DEPANCOL DRAG. C/25	41,10	41,10	
MR. [illegible] O. GRUZIS			
5 V. UIBIOTYL 1,0	64,80	324,00	
MR. CONSTANTION NEGRIS			
1 V. LUTISANOL	21,50		
1 FUNDA ELASTICA AD.	108,00	129,50	
MR. D. PORTALOS G.TZORLATOS			
1 V. PANTOPE?	45,00	45,00	539,60

NOTA Nº 11687

SR. NICOLAS GEOMOUMLOS

1ºV. BELA CEVALIN COMPOSTO C/40	6[illegible],00		
1 V. DECOVIT C/30	[illegible]	1[illegible],80	
SR. NICOMEDES VALENCIA			
2 CX. LACIPAN	49,00		
1 MUCO ANTIPHYIOL	21,50		
1 V. DECOVIT C C/30	67,20		
1 T. NOVALGINA COMPS.	23,30	161,00	291,20

NOTA Nº 11688

AR. DOUROS SIAIMARIS

1 V. ALUCOL COMPOSTO	52,60		
2 PT. SULFATO BARIO HERALCA	140,024,00	76,60	
MR. GROUZIS OMIROS			
2 T. STOPTON PASTA	45,20		
1 V. CINALGINA C/10	12,00	57,20	
MR. METROPOLOS			
1 P. TOLER	15,50		
1 V. BETAIODAL	37,60	53,10	186,90
			1.017,70

A TRANSPORTAR

Plaintiff's Exhibit 5

Doctor's Report, Santos, Brazil

(OFFSETS)

[*For convenience of Court and Counsel these Copies are bound in on the opposite page.*]

Plaintiff's Exhibit 5

(p. 45a -1)

Co.

MARRIS,

Dis in Urology Dept

Hermans

Mattingly

Yanamura

Maintenance

Later

Secret

This Doc fitted him with Truss.

Dr. SERAPHIM FERRAMENTA

MÉDICO

Consultório:
R. D. Pedro II, 76 - 3.o Andar
Salas 16 - 17 - 18
Horário:
Des 10,00 às 12,00 horas
Des 15,00 às 18,00 horas
Telefone, 2-4544

SANTOS

Residência:
Rua Firmino Barbosa N.° 8
Telefone, 4-3928

Santos
Brazil
3/12/52

Bill to ship
for Elastic Belt
for hernia

DROGASIL LIMITADA

SÉDE SOCIAL: Rua Santo Amaro, 554 — Telefone 33-1121 — SÃO PAULO

(p. 45 a - 4)

Memorandum da Filial: FARMASIL BÉTA

Rua General Câmara, 34 — Telefônes: 4677 e 4914 — SANTOS

TRANSPORTE 1.017,70

NOTA Nº 11609

MR. GEORGE COLON

1 V. HEPANEURIM LIG.	37,60		
1 T. NOVALGINA COMPS.	23,30		
1 CX. NECROTON 3X5CC HOSP.	81,00	141,90	

Duplicata nº. 1.879

MR. DANIEL HERNANDES

1 T. CORAMINA R. COMPS.	34,60		
2 V. DURACILIN AQUOSO 400000	70,00	104,60	246,50

NOTA Nº 11.691

MR. LEFTERATOS

4 V. DIBIOTYL	64,80	259,20	
1 T. ANTITETANICO I.P.1500x2CC	12,30	12,30	271,50
		CR.$	1.535,70

(HUM MIL, QUINHENTOS E TRINTA E CINCO CRUZEIROS E SETENTA CENTAVOS.)



(47a)

CERTIFICATE OF MEDICAL CARE

FROM: NAME AND ADDRESS OF U. S. PUBLIC HEALTH SERVICE HOSPITAL, OUTPATIENT CLINIC, OR OUTPATIENT OFFICE

DATE: 2/8/55 RGB

NAME OF PATIENT: Constantinos Macris

CLASS OF BENEFICIARY: Immig.

REGISTER NUMBER: 123853

ADDRESS: on ship

DESCRIPTION	DATE OF BIRTH	HEIGHT	COMPLEXION	COLOR HAIR	COLOR EYES
	age 25				

NAME OF VESSEL: SS Euryviades

DATE LAST SERVED ABOARD:

TREATMENT RECEIVED

HOSPITAL—INPATIENT ☐ FROM ..... TO ..... OUTPATIENT ☒ FROM 4/8/52 TO 4/8/52

DISPOSITION:

DISCHARGED AS INPATIENT ☐
DISCHARGED AS OUTPATIENT ☐
STILL UNDER TREATMENT ☐

REASON:

WITH MEDICAL CONSENT ☐
AGAINST MEDICAL ADVICE ☐
A. W. O. L. ☐

REASON FOR PRESENT ADMISSION

Patient was examined at request of Immigration authorities.

OPERATIONS

PERTINENT DIAGNOSES FOR PRESENT ADMISSION	CONDITION ON ABOVE DATE	DEGREE OF RECOVERY ANTICIPATED AND EXPECTED DATE
1. Bilateral inguinal herniae	Fit for light work not involving heavy lifting	
2.		
3.		
4.		

REMARKS

RETURN APPOINTMENT .....

SIGNATURE OF MEDICAL OFFICER OR MEDICAL RECORD LIBRARIAN: M. Loyola Voelker

SIGNATURE OF PATIENT:

M. Loyola Voelker

U. S. GOVERNMENT PRINTING OFFICE 16—65827-1

81

Plaintiff's Exhibit 6

Marine Hospital Report, Baltimore, Md.

(OFFSETS)

[For convenience of Court and Counsel these Copies are bound in on the opposite page.]

Defendants' Exhibit D

LAW OFFICES
GUSTAVE A. GERBER
120 West 42nd Street
New York 18, N. Y.

WIsconsin 7-3722

July 22, 1952

Petmar Agencies, Inc.
17 Battery Place
New York City, New York

Re: Claims of Macris

Gentlemen,

We herewith reduce to writing the essence of our telephone conferences of the past few days, with regard to the claims of Constantine Macris, who had served your Agencies as Second Mate on the S/S "Enriviades", flying the Liberian Flag.

As to Money Claims:

Mr. Macris claims compensation for earned vacation time, in the amount of $74.50; for service in war waters, $137.19; and for Saturday and Sunday work, $352.78.

Payment in the total amount of $564.47, is hereby demanded.

As to Surgical Treatment and Hospital Care:

As you have been informed by us, it is Mr. Macris' election to receive surgical treatment and hospital care, as is indicated for and required by him, here in the United States.

Defendants' Exhibit D

If his reasons are of any interest to you, they are as follows:

1. He believes that such care and treatment here will be of higher and better quality;

2. He feels that after cure, his opportunities will be better here for rehiring.

We regret that your indicated feeling is not to provide the aforesaid treatment here, but that you are insisting upon his repatriation and having him shipped back to Greece. We respectfully indicate to you our belief that it is wholly within the right of the seaman to elect whether he will be repatriated for the purposes of medical and surgical treatment; and as has been stated, Mr. Macris elects to be treated here, and demand is hereby made for his maintenance and care.

We trust you will reconsider your present position, on this matter. Otherwise you will leave us with no alternative but to proceed to make the necessary arrangements, in his behalf, charge the same to your account, and proceed to the enforcement and collection thereof.

It is our hope that you will reconsider your presently announced refusal. Your immediate response is requested.

Very truly yours,

GUSTAVE A. GERBER
Gustave A. Gerber

gag:ds
ANGY-1

Defendants' Exhibit H

Form I-259
U. S. DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
(Edition 2-1-44)

NOTICE TO DELIVER, DETAIN ON BOARD, OR REMOVE ALIENS

PORT OF Baltimore, Md 4-5, 1955

To the Owner, Agent, Consignee, Master or Officer in Charge of the

Lib SS. Eurysiades
Texas Transport & Term. Line.

Pursuant to the provisions of the Acts of February 5, 1917, December 26, 1920, and May 26, 1924, and the Immigration Regulations issued by the Attorney General thereunder, you are hereby directed to

Erase two
~~deliver to~~
detain on board at all U. S. Ports and deport
~~remove to~~

ON board
†(Place of delivery or detention)

the following-named aliens, with their baggage, your attention being invited to the appropriate sections of the statutes appearing on the reverse side hereof, and regulations made thereunder:

NAME	STATUS ON VESSEL (1st, 2d, 3d, or tourist class passenger; member of the crew; stowaway, etc.)
Constantinos Macris 34	Greek, 2nd Mate
	Malafide
Ioannis Hatzimanolis 27	Greek
	Malafide

EXHIBIT H
U. S. Dist. Court
S. D. of N. Y.
21 OCT 1955
ADM

BY DIRECTION OF THE IMMIGRATION AND NATURALIZATION OFFICER IN CHARGE.

James Graham
U. S. Immigrant Inspector.

Receipt of the above notice is hereby acknowledged April 5,
19 55 at 4:30 P. M.
(Time)

(Signature)

Master
(Title of person signing receipt)

(OVER)

U. S. GOVERNMENT PRINTING OFFICE 16—18027-1

EXTRACT FROM THE ACT OF FEBRUARY 5, 1917

SEC. 1. * * * That the term "seaman" as used in this act shall include every person signed on the ship's articles and employed in any capacity on board any vessel arriving in the United States from any foreign port or place.

SEC. 10. (As amended by Sec. 27 of immigration act of 1924.) That it shall be the duty of every person, including owners, masters, officers, and agents of vessels of transportation lines, or international bridges or toll roads, other than railway lines which may enter into a contract as provided in section 23, bringing an alien to, or providing a means for an alien to come to, the United States, to prevent the landing of such alien in the United States at any time or place other than as designated by the immigration officers. Any such person, owner, master, officer, or agent who fails to comply with the foregoing requirements shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine in each case of not less than $200 nor more than $1,000, or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment; or, if in the opinion of the Attorney General, it is impracticable or inconvenient to prosecute the person, owner, master, officer, or agent of any such vessel, such person, owner, master, officer, or agent shall be liable to a penalty of $1,000, which shall be a lien upon the vessel whose owner, master, officer, or agent violates the provisions of this section, and such vessel shall be libeled therefor in the appropriate United States court.

(b) Proof that the alien failed to present himself at the time and place designated by the immigration officers shall be prima facie evidence that such alien has landed in the United States at a time or place other than as designated by the immigration officers.

Extract from Section 15

SEC. 15. That * * * *immigration officials may order a temporary removal of such aliens for examination at a designated time and place, but such temporary removal shall not be considered a landing, nor shall it relieve vessels, the transportation lines, masters, agents, owners, or consignees of the vessel upon which said aliens are brought to any port of the United States from any of the obligations which, in case such aliens remain on board, would under the provisions of this act bind the said vessels, transportation lines, masters, agents, owners, or consignees:* * * *Whenever a temporary removal of aliens is made the vessels or transportation lines which brought them and the masters, owners, agents, and consignees of the vessel upon which they arrive shall pay all expenses of such removal and all expenses arising during subsequent detention, pending decision on the aliens' eligibility to enter the United States and until they are either allowed to land or returned to the care of the line or to the vessel which brought them, such expenses to include those of maintenance, medical treatment in hospital or elsewhere, burial in the event of death, and transfer to the vessel in the event of deportation, excepting only where they arise under the terms of any of the provisos of section eighteen hereof. Any refusal or failure to comply with the provisions hereof shall be punished in the manner specified in section eighteen of this act.*

EXTRACT FROM THE ACT OF DECEMBER 26, 1920

An Act to provide for the treatment in hospital of diseased alien seamen.

* * * That alien seamen found on arrival in ports of the United States to be afflicted with any of the disabilities or diseases mentioned in section 35 of the act of February 5, 1917, * * * shall be placed in a hospital designated by the immigration official in charge at the port of arrival and treated, all expenses connected therewith, including burial in the event of death, to be borne by the owner, agent, consignee, or master of the vessel, and not to be deducted from the seamen's wages, and no such vessel shall be granted clearance until such expenses are paid or their payment appropriately guaranteed and the collector of customs so notified by the immigration official in charge: *Provided*, That alien seamen suspected of being afflicted with any such disability or disease may be removed from the vessel on which they arrive to an immigration station or other appropriate place for such observation as will enable the examining surgeons definitely to determine whether or not they are so afflicted, all expenses connected therewith to be borne in the manner hereinbefore prescribed. * * *

EXTRACT FROM THE ACT OF MAY 26, 1924

SEC. 3. When used in this act the term "immigrant" means any alien departing from any place outside the United States destined for the United States, except * * * (5) a bona fide alien seaman serving as such on a vessel arriving at a port of the United States and seeking to enter temporarily the United States solely in the pursuit of his calling as a seaman. * * *

SEC. 19. No alien seaman excluded from admission into the United States under the immigration laws and employed on board any vessel arriving in the United States from any place outside thereof, shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to such regulations as the Attorney General may prescribe for the ultimate departure, removal, or deportation of such alien from the United States.

SEC. 20. (a) The owner, charterer, agent, consignee, or master of any vessel arriving in the United States from any place outside thereof who fails to detain on board any alien seaman employed on such vessel until the immigration officer in charge at the port of arrival has inspected such seaman (which inspection in all cases shall include a personal physical examination by the medical examiners), or who fails to detain such seaman on board after such inspection or to deport such seaman if required by such immigration officer or the Attorney General to do so, shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of $1,000 for each alien seaman in respect of whom such failure occurs. No vessel shall be granted clearance pending the determination of the liability to the payment of such fine, or while the fine remains unpaid, except that clearance may be granted prior to the determination of such question upon the deposit of a sum sufficient to cover such fine, or of a bond with sufficient surety to secure the payment thereof approved by the collector of customs. The Attorney General may, upon application in writing therefor, mitigate such penalty to not less than $200 for each seaman in respect of whom such failure occurs, upon such terms as the Attorney General in his discretion shall think proper. This section, as amended, shall apply to all penalties arising subsequent to June 5, 1940.

(b) Proof that an alien seaman did not appear upon the outgoing manifest of the vessel on which he arrived in the United States from any place outside thereof, or that he was reported by the master of such vessel as a deserter, shall be prima facie evidence of a failure to detain or deport after requirement by the immigration officer or the Attorney General. * * *

† When delivery to the immigration station is directed, the aliens must be detained on board of the ship on which they arrived pending delivery to the immigration station. Such transfer must be made by the most direct and expeditious route with the least possible contact with the public, and at the expense and responsibility of the steamship company. Aliens who have been held for further medical examination in the belief that they are suffering from communicable diseases must be completely isolated from other passengers and from the public.

16—18027-1

Defendants' Exhibit E

LAW OFFICES
GUSTAVE A. GERBER
120 West 42nd Street
New York 18, N. Y.

WIsconsin 7-3722

July 30, 1952

Petmar Agencies, Inc.
17 Battery Place
New York City, New York

Re: Claims of Constantine Macris

Gentlemen,

We write you with regard to the provision of medical and surgical care and maintenance to be supplied by you for Mr. Constantine Macris, who has served the S/S "Euriviades", as Second Mate.

Confirming understandings had with and through your attorney Renato Giallorenzi, Esq., in view of the fact that Mr. Macris has elected to take his medical and surgical treatment here, he is waiving his right to repatriation to Greece, under his present or recent Articles.

As to Mr. Macris' money claims, as per our letter under date of July 22, 1952, we understand that this matter is now under proper investigation and that we shall have prompt notice of your disposition thereof.

Very truly yours,

GUSTAVE A. GERBER
Gustave A. Gerber

gag:ds

DELIVERY BY HAND
RATIFIED AND CONFIRMED:

C. MACRIS
Constantine Macris

Defendants' Exhibit J

Baltimore, April 14, 1952

AFFIRMATION

The Undersigned, Constantinos Makris, Second Officer S.S. "Evryviades", affirm that Mr. Panag. Drakatos, Master of the above steamship, has acted through the local Authorities and succeeded in obtaining my repatriation to Greece, by the S.S. "Nea Hellas", sailing on May second of this year, so that I submit to Surgery for both-side Hernia, which I suffered during my work on the above mentioned vessel. The Captain in question, would also pay my passage to Piraeus. Because however, it is intended that I stay in Ellis Island, where Aliens in America are detained, until the above date, viz (18) eighteen days from to-day, I prefer to remain as member of the crew, under my rating of Second Officer, releasing the Captain, personally, in the event that any complication occurs, due to my Hernia. It must be noted that the Department of Aliens (Immigration) here, confined me within the vessel, during my stay here, because I had come to America for the first time.

The Affirmant

(Sign.) C. MAKRIS

Defendants' Exhibit J

State of New York,
County of New York—ss.:

EUGENE ANTONIADES, being duly sworn, deposes and says:

That I am a naturalized citizen of the United States and reside at No. 159-00 Riverside Drive West, New York, N. Y.

That I am familiar with both the Greek and English languages and that I have translated the annexed document and that the annexed translation is, to the best of my knowledge and belief, a true and correct version of said document.

EUGENE ANTONIADES

Sworn to before me this
6th day of October, 1955.

LENORE SCALLEY
Lenore Scalley
Notary Public, State of New York
No. 41-8778800
Qualified in Queens County
Cert. filed in New York Co. Clk.
Commission Expires March 30, 1956

(Seal)

Defendants' Exhibit K

REQUEST AND RECEIPT

To: Captain
SS "Euryviades"

Dear Sir:

It is cordially requested that a payment of 1,050,000 wons* (W1,050,000.00) be made for medical treatments of SS "Euryviades" crews, details of which are as follows:

G. Giennoutsos	Treatments for 15 times	W500,000.00
C. Tsandoulis	Finger Operation	50,000.00
	Penicillin and others	50,000.00
D. Guizepis	Injection	100,000.00
N. Mitzopoulos	Injection	85,000.00
Ch. Cohlios	Treatment of stomach	150,000.00
C. Macris	Examination	25,000.00
J. Hatzimanolis	Examination	25,000.00
G. Drakakos	Examination & medicines	65,000.00
	Total	W1,050,000.00

* Official exchange rate is 6,000.00 Wons to one U. S. Dollar (U. S. $1.00).

This is to acknowledge the receipt of above amount of pay on this fifteenth day of June, 1952.

KIM WAN KILL HOSPITAL
8 Bahnwol-dong,
Masan, (Korea)

s/ Dr. Kim Wan Kill

Defendants' Exhibit K

State of New York,
County of New York—ss.:

TAE JIN KAHNG, being duly sworn, deposes and says:

1. That I am a native Korean, and a citizen of the Republic of Korea, and at present I reside at 500 Riverside Drive, in the City and State of New York, and I am engaged in studies at Columbia University.

2. That I am familiar with both the Korean and English languages and have translated the annexed document and I hereby certify that the said translation is a true and correct translation of the contents of the said document.

TAE JIN KAHNG

Sworn to before me this
29 day of September, 1955.

SAMUEL BUSCEMI
Samuel Buscemi
Notary Public, State of New York
No. 31–5546800
Qualified in New York County
Cert. filed with N. Y. Co. Clks. & Reg. Off.
Term expires March 30, 1956

(Seal)